



### Selling Real Estate at Public Auction

Donna Brinker Potter, Program Manager Ohio Department of Agriculture

The Ohio Auction Law underwent a major revision in May, 2005. There were many changes which affect the sale of real property at auction. Selling real property at auction requires compliance with not just with Chapter 4735 of the Ohio Revised Code, but also with Chapter 4707. The Department of Agriculture would like to review some of the key components of the Ohio Auction Law (Chapter 4707 of the Revised Code) that directly affects the sale of real property at auction. For a current copy of the Ohio Auction laws and rules, visit the Ohio Department of Agriculture web page at [www.ohioagriculture.gov/auction](http://www.ohioagriculture.gov/auction), and then click on Auctioneer Guide.

Before real property can be sold at auction, R.C. 4707.021 requires a licensed auctioneer, who is also licensed as a real estate broker or real estate salesperson under Chapter 4735, to enter into the auction contract for the sale of real property at auction. A real estate broker or salesperson who is not licensed as an auctioneer cannot sign the auction contract for the sale of real property at auction. However, this does not mean that a real estate broker or salesperson cannot enter into a listing agreement for a piece of real property. If the seller ultimately chooses the auction method of marketing, the licensed auctioneer/licensed real estate broker or salesperson who is going to conduct the auction must sign the auction contract, which is a different document from the listing agreement. The contract must comply with the provisions found in R.C. 4707.20. Apprentice auctioneers are not permitted to sign contracts for the sale of real property at auction even if they are licensed under R.C. 4735.

Pursuant to R.C. 4707.22(F), the advertisement for the real estate auction must list the name of the licensed auctioneer, as well as the Ohio licensed real estate broker. This does not mean, however, that the real estate brokerage may advertise “auction services”, “an auction division,” or use similar words, unless the real estate brokerage is also licensed pursuant to R.C. 4707.073. It is ODA’s position that the use of such terms as “auction division” or “auction services” would reasonably lead a member of the public to believe that the brokerage holds a valid auctioneer’s license, when this is not correct. Such advertising, when the brokerage firm does not have a valid auction license itself, is a violation of the prohibitions contained in R.C. 4707.073(A). R.C. 4707.22(F) merely gives the Ohio licensed real estate broker the right to advertise the particular auction of real property without the need to obtain an auctioneer license.

Another issue to keep in mind when advertising real property at auction is that if the real property is being sold absolute, the advertisement must explicitly state that the property is being sold at absolute auction (R.C. 4707.22(C)). If no mention is made in the advertisement as to whether the auction is absolute or with a reserve, then the auction is considered to be with a reserve. If the advertisement is for an auction of more than one piece of real property, and if some of the lots are to be sold absolute and others with a reserve, then the advertising must clearly state which properties are being sold absolute and which are being sold with a reserve (R.C. 4707.072(B)(3)).

The Ohio Department of Agriculture would also like to address an issue related to the real estate broker and auctioneer corporation license. The question has been asked whether a real estate brokerage is allowed to advertise auction services to prospective clients using either the terms “auction division”, “auction services”, or words similar thereto. “Auction services” are defined in R.C. 4707.01(M) as “arranging, managing and sponsoring a personal property auction ... including the taking and advertising of personal property on consignment to be sold at auction by a licensed auctioneer.” The use of terms such as “auction services” or “auction division” gives the impression that the brokerage is licensed and can perform acts that only a corporation licensed under Chapter 4707 may perform. Section 4707.073(A)



of the Revised Code provides that a corporation may not “act or hold itself out as an auctioneer” unless it is licensed under R.C. 4707.073 or R.C. 4707.071. While R.C. 4707.073(G) exempts a real estate broker licensed under R.C. 4735 from this licensing requirement (as long as R.C. 4707.021 and 4707.22 are complied with), R.C. 4707.073 still does not permit a corporation licensed as a real estate broker to represent itself as being a licensed auctioneer, unless the corporation also holds an auctioneer’s license.

The information provided in this article is general in nature; it serves to highlight specific sections of the Ohio Auction Law. Therefore, it is recommended that you consult a legal professional regarding any specific questions or concerns that you may have on this topic regarding compliance with this Chapter or any Chapter of the Ohio Revised Code.

